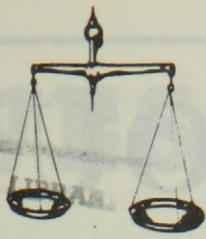


Quid Novi



VOL. VII NO. 5

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE MCGILL

October 15, 1986
le 15 octobre 1986

L.S.R. launches new anti-nuke lawsuit

by Andy Orkin

Lawyers for Social Responsibility, Canada, has decided to join efforts to prepare a Federal Court challenge against Canada's participation in American nuclear strategy. The goal is a judicial review of government policies that permit US nuclear-bearing ships and aircraft into Canadian territory.

The resolution followed a day of discussion by over 60 lawyers, invited experts, judges and law students at the second national LSR conference in Victoria last week. The organization has over 800 members in sixteen chapters across Canada.

Proceedings were led by former Justice Tom Berger, and panellists included Dr. Edward McWhinney Q.C., Prof. Don Macrae of U.B.C., Norman Dyson Q.C., Dr. Fred Knelman, and Dr. Jim Bayer of Royal Roads Military College. After an examination of the factual situation of Canada's role, Dr. McWhinney outlined proposals for a case, and discussed whether nuclear arms issues can be raised in a Canadian court.

The organization is determined not to suffer the fate of Operation

Dismantle in having its statement of claim rejected as not disclosing a cause of action. Panellists and participants undertook a detailed examination of procedural and evidentiary barriers to such a case, as a basis for further research prior to the launching of a suit.

It was agreed that there is substantial support in international law for the intrinsic illegality of nuclear weapons, but that there is no easy route to litigating this position in a Canadian Court. There is however, an emerging genre of this form of litigation in courts in other countries - there are similar cases underway in Belgium, Holland and elsewhere - and the Charter may provide a Canadian statutory basis for the raising of international law arguments on the issue. The Operation Dismantle decision left the door open on the justiciability of the issue and on naming the Crown as defendant such a case.

LSR's decision to start preparations on the suit and commit research and funding resources to the project is expected to be followed by similar commitments from Canadian Physicians for the Prevention of

Nuclear War, whose President was an observer at the conference, as well as from religious and labour organizations.

A second resolution, proposed by delegates from McGill and Quebec, called

Cont'd on p. 4

QUOTES OF THE WEEK

Julius Grey on the qualifications required for judicial appointment (in Judicial Review of Administrative Action).

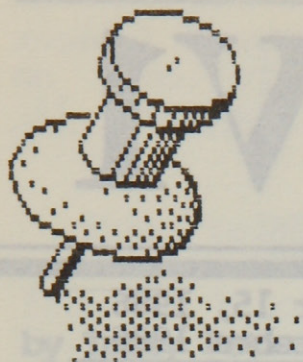
"I don't believe any wino in Dominion Square, even if he is a lawyer, should be appointed to the bench."

P.A. Crépeau in Obligations IIA:

"Law is common sense, except where the legislature says otherwise."

Anonymous

To the effect of "I'm not a smoker so I don't know how to inhale and the damn thing didn't have any effect on me."



ANNOUNCEMENTS

To The Attention Of All Students - First Term

Transcript Verification

All students must verify their transcripts at The Student Affairs Office between 9:30 A.M. & 4:30 P.M. commencing Wednesday, October 15.

Graduating students are especially urged to verify their transcripts immediately.

Your compliance in verifying your record as early as possible will ensure immediate processing of corrections.

N.B. The Student Affairs Office is here to assist you, and thanks you for your cooperation.

Don't Miss THE GREAT GIVEAWAY

From now until October 24th, non-current issues of the McGill Law Journal will be made available at a super low price of \$1.00 per copy! You choose the issue you want, from the many made available.

These issues are on sale at the Handout Office from 12:00-2:00 P.M., each day of the week.

Get your order in soon while supplies last!.

Thank you,

Robert Snowdon

Talmud Class

Meets this Wednesday at 1:00 P.M. Room 203.

Class given by Prof. Lawrence Kaplan.

Everyone Welcome

Superior Court Research Internships

TO: All students in third or fourth year.

I am pleased to announce that the Faculty has reached agreement with the Superior Court on a program of research assistantships at the Court. The Court is looking for three or four student assistants, both anglophone and francophone, who would spend approximately one day a week doing research for individual judges. Students interested in these internships would commit themselves for the full duration of the academic year 1986-87, starting as soon as possible. The Faculty is willing to grant academic credits for the internships under the courses First Research Seminar and Second Research Seminar, for a total of four (4) credits. Students interested in the Superior Court research internship program should contact Professor Ethel Groffier-Atala prior to **Tuesday, October 14.** For the purpose of the internships, the course add-on and drop period will be extended.

N.B.: Students having submitted an application for the Court of Appeal Research Internships will also be considered.

P.P.C. Haanappel
Associate Dean (Academic)

Placement Centre

NORTHWEST TERRITORIES

An articling position is available with the law firm of COOPER JOHNSON of Yellowknife, N.W.T. Articles would include exposure to all areas of private practice except tax law. The firm will pay cost of taking Bar Admission course at Law Society of Alberta. Résumés are to be forwarded to the attention of Ms. Theresa Slator, Office Manager of this firm, or call collect at 403-873-4004 for further information. Refer to Posting #13.

Suzanne Higgins

QUEBEC

HART, SAINT-PIERRE & DES MARAIS, a firm specializing in corporation-commercial law, tax law and commercial litigation is presently seeking a bilingual student seeking part-time employment during the current academic year and/or full time employment for the summer of 1987. Interested students are invited to submit their C.V.'s and academic results to Mr. Gino Martel. Refer to Posting #14.

LEGAL TRAVESTY BY A.B.A.

This article was published in the Washington Post on August 7, 1986. The Quid's editors have found it "apropos" to reproduce.

by Alan Dershowitz

The Association of Soviet Lawyers is one of the most disreputable professional groups on the face of the Earth. It consists of hack lawyers throughout the Soviet Union who automatically do the bidding of the KGB.

Real lawyers who have the courage to represent dissidents or otherwise defy the orders of the Communist Party are excluded from the association. The association publishes racist books, serves as an official apologist for Soviet oppression, and does much of the KGB's legal dirty work.

I know about this because I have had numerous professional dealings with its members and leaders. One of its leaders is a man named Samuel Zivs, whom I know quite well. He is a pathetic figure. A Jew who serves as first vice chairman of the "Anti-Zionist Committee of the Soviet Public" - a thinly veiled anti-Semitic front - Mr. Zivs is periodically paraded out in front of the press to assure doubters that Jews can achieve positions of authority in the Soviet Union. Our State Department has officially characterized Mr. Zivs's views as anti-Semitic.

Nor does the Association of Soviet Lawyers limit its vitriol to Jews. It mir-

rors the official Soviet policy of opposition to all religions - and indeed to all freedom of belief and expression.

But why should Americans care about a foreign association of lawyers in a faraway place? There are many reasons why all freedom-loving people should care, but there is one immediate reason that demands attention.

Last year, the American Bar Association signed an official "agreement" with the Soviet association, in which the American lawyers profess "mutual respect" for the Soviet association. On July 24 of this year, the president of the ABA notified the organization's House of Delegates that the original agreement had been superseded by a new "Declaration of Cooperation" in which the ABA acknowledges that the Association of Soviet Lawyers is "pledged to advance the rule of law" and to promote "human rights".

It is as if the ABA had signed an agreement with the "official" legal organization of the apartheid regime in South Africa that would certainly require full debate. Indeed, this is one instance where the Soviet Union is even worse than South Africa. A significant number of South African lawyers actually oppose their government's horrendous racist policies, and use their considerable legal talents to fight them. Their professional lives are not made easy by the South African authorities, but they are allowed to practice and to retain

their membership in professional organizations.

Not so in the Soviet Union. The Association of Soviet Lawyers sees to it that there is no possibility for an opponent of Soviet-style apartheid - discrimination based on religion - to receive independent legal representation. I wish we could hear from some of the expelled lawyers.

This, then, is the association toward which our largest lawyers' group was prepared to show "mutual respect"! This is the association that supposedly has "pledged to advance the rule of law" and "human rights"!

Is the repressive iron fist of the KGB, which imprisons dissidents at will, to be shown "mutual respect"? Is it the "rule of law" that declares devout Baptists to be "insane" and subjects them to shock therapy?

Does the ABA wish to "cooperate" with an organization that defends the Soviet "human rights" policy of closing the emigration door to those who want to join their families in other parts of the world?

A growing number of lawyers - liberals, conservatives, Jews, Christians, human rights activists, supporters of detente - have expressed outrage at the insensitivity of the ABA's agreement. They are calling for its retraction, or - at the very least - for a demand by the ABA

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Quid Novi is published weekly by students at the Faculty of Law of McGill University, 3644 Peel St., Montreal H3A 1W9. Production is made possible by support of the Dean's office and by direct funding from the students. Opinions expressed are those of the author only. Contributions are published at the discretion of the editor and must indicate author or origin.

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Quid Novi est une publication hebdomadaire assurée par les étudiants de la faculté de droit de l'université McGill, 3644 rue Peel Montréal, H3A 1W9. La publication est rendue possible grâce à l'appui du bureau du doyen, ainsi que par le financement individuel des étudiants. Les opinions exprimées sont propre à l'auteur. Toute contribution n'est publiée qu'à la discrétion du comité de rédaction et doit indiquer l'auteur ou son origine.

LSR National Conference Cont'd from p. 1

on the Canadian government to re-examine its agreement to allow US cruise missile tests in Canada, and expressed LSR's concern about the possible resulting abrogation of arms control agreements. The government has acknowledged that missile tests will be resumed this winter. It appears that further deployments of US cruise missiles of the variety being tested in Canada may lead to a breach of the SALT II treaty, perhaps as early as next month.

LSR's national president David Wright, Q.C. said at a press conference after the meeting that he expects a decision within 12 months on whether the suit will actually be launched. "Considerable research, under the guidance of constitutional and international law experts, has already been begun, but must be completed before the final decision can be made. But the view of the lawyers and experts at the conference is that there is ample reason to proceed - both for reasons of law and of survival."



Legal Travesty by ABA Cont'd from p. 1

that the Soviet association show some real support for the rule of law before the agreement is renewed.

Nor is this an issue of concern only to lawyers. Every American who cares about freedom has a stake in seeing that an important American institution - and the ABA is certainly that - does not become complicitous in repression. What the Association of Soviet Lawyers wants most is international recognition for the Soviet legal system. Once it is accorded this recognition, it can go about its business of legitimizing oppression with less concern for international criticism.

Experience has shown that whenever the Soviet Union's legal system has received enhanced international legitimacy, it has responded with emboldened repression. The ABA agreement does not bode well for the brave Soviet citizens who daily risk their freedom in order to practice their beliefs.

If a single devout Baptist goes to jail, if a single human rights activist is sent to a mental hospital, if a single Jew is denied the right to emigrate, in part because of the ABA agreement, then the American Bar Association will have become a conspirator in injustice and repression.

I do not want to belong to an association of such conspirators and neither do a growing number of highly regarded lawyers. The ABA, which is now reconsidering its action, should rescind its agreement with the Association of Soviet Lawyers, and instead offer to cooperate with any Soviet citizens who support the struggle for human rights. They are the ones who truly deserve mutual respect. They are the ones who are pledged to advance the rule of law.

Letters to the Editor

To the Editor,

There has been a great deal of grumbling about the L.S.A. Bookstore this semester due to the late arrival of many course materials. I am writing this letter because I am not willing to shoulder the blame for those aspects of the problems which were not due to any fault on my part.

I sent memoranda to all professors and practitioners who would be teaching courses at two times during the summer. The first memorandum set a deadline of 30 June for the requisitioning of course materials; the second extended the deadline to 15 July. Only one professor respected the deadline. This is important because materials ordered from publishers may take six weeks or longer to arrive, and, while casebook printing can be achieved in the space of one week in an ideal situation, the same is not true when a large amount of printing is required in a short space of time. I received many of the casebooks for printing in the latter half of August, when the printing service was busy with other work as well, and I am not surprised at the delays thereby occasioned for many of the casebooks.

A part of the problem with the casebooks was the volatility of class sizes. I printed the casebooks based upon registration levels available to me at the time of printing, but the course change period effectively changed most of those levels.

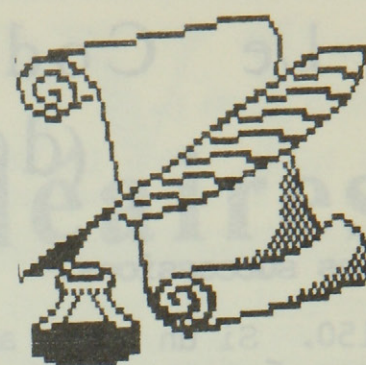
Another part of the problem with casebook shortages was due to my planning.

The L.S.A. Bookstore has a very large inventory of obsolete casebooks, all of which must eventually be written off and accounted for in prices at the Bookstore. Not wanting to add to that inventory, and taking into consideration the phenomena of the trade in used casebooks and the practice of relying upon library copies of casebooks rather than purchasing personal copies, I did not order to class size where the casebook remained unchanged from previous years. Unfortunately, those phenomena seem to have disappeared this year, resulting in stock shortages at the Bookstore.

The book-publishing industry, to whose organizational follies I must ascribe the blame for the long delays experienced in obtaining published texts, is a species unto itself. Adding to this the surprising (to me) phenomenon of professors asking students to purchase titles not requisitioned from the Bookstore, we are left again with deficiencies in the stock. My only shortcomings in this respect, I believe, are my lack of extra-sensory perception and my unfamiliarity with the textual exigencies of courses I have not taken.

I apologize for those problems which were due to my good-faith planning; I resent the imputation to me of responsibility for those problems caused by others.

I should like finally to comment on the L.S.A. Bookstore's opening hours, now Mondays and Wednesdays from 12:00 to 14:00. I think that this amount of time is quite sufficient, especially considering the fact that I, too, am a



fulltime student in the Faculty of Law. Perhaps you will understand my feeling that requests for sales outside the Bookstore's opening hours lack sensitivity to the exigencies of my own academic career and that complaints about the "inadequacy" of the Bookstore's opening hours from those who are not willing to volunteer their time, as I do, lack integrity.

Ken Monteith
L.S.A. Bookstore

Cont'd on p. 6

Dear Abby Initio

Dear Abby Initio,

I keep asking myself what the hell I'm doing here. We never had this much stress and work in undergrad. Most of the time I like law school, but the pressure really gets to me about once a week. The life of a simpleton would be so much easier. How can I overcome my anxiety?

Too smart for my own good

Dear Too Smart,

Don't worry. The pressure gets to all of us from time to time. Luckily, our faculty has a great location. Thomson House is only two minutes away and the Peel Pub is just down

Cont'd on p. 8

Le Code de Hammourabi (dernière partie)

Les successions.

150. Si un homme a donné à son épouse champ, verger, maison et lui a laissé une tablette; après la mort de son mari, ses enfants ne lui contesteront rien; la mère après sa mort le donnera à l'un des enfants qu'elle préfère, mais elle ne le donnera pas à un frère (= à un étranger?).

162. Si un homme a pris une épouse, et si elle lui a donné des enfants, si cette femme meurt, son père ne réclamera rien de sa serigtu: la serigtu de l'épouse est à ses enfants.

165. Si un homme a donné à l'un de ses fils, le premier de son regard, champ, verger, maison et lui a donné une tablette, si ensuite le père meurt, quand les frères partageront, ce fils gardera le cadeau que le père lui a donné, et de plus, pour la fortune mobilière on partagera à parts égales.

166. Si un homme a pris épouses pour les fils qu'il a, à l'exception de l'un d'eux en bas âge, quand le père mourra, et que les frères partageront la fortune mobilière de la maison

paternelle, ils donneront à leur frère en bas âge qui n'a pas encore pris une épouse, en outre de sa portion, de l'argent pour une tirhātu, et ils lui feront prendre une épouse.

167. Si un homme a pris une épouse, et si elle lui a donné des enfants, quand cette femme mourra, si, après elle, il prend une autre épouse qui lui donne aussi des enfants; quand le père mourra, les enfants ne partageront pas selon les mères (en deux); ils prendront la serigtu de leur mère (chaque groupe celui de la sienne); mais ils (tous) partageront à parts égales la fortune mobilière de la maison paternelle.

183. Si un père a offert une serigtu à sa fille (de) concubine, et l'a donnée à un mari, lui a gravé une tablette, quand ensuite le père mourra, elle ne participera pas à la fortune mobilière de la maison paternelle.

184. Si un homme n'a pas offert de serigtu à sa fille (de) concubine ni ne l'a donnée à un mari, quand ensuite le père mourra, ses frères lui offriront une serigtu, selon la fortune de la maison paternelle, et la donneront à un mari.

MEET THE CANDIDATES FOR MAYOR OF MONTREAL

Congregation Temple Emanu-El-Beth Sholom is proud to present another program in the community interest. The public is invited to attend a two-part forum on the upcoming Montreal municipal elections. On Tuesday, October 21st, Mr. Jean Doré, M.C.M. candidate for Mayor will speak at Temple. On Tues-

day, October 28th, Mr. Claude Dupras, Civic Party candidate for Mayor will speak. A question period will follow on both nights. Meetings start at 8:00 p.m. Get involved in the democratic process as these two men - one of whom will be Mayor - will speak to the Montreal community at Temple Emanu-El-Beth Sholom, 4100 Sherbrooke St., West, in Westmount. Telephone 937-3575.

Cont'd from p. 5

Dear Editor,

Peter Benson's letter in last week's Quid about the kind of reception the delegation of Soviet lawyers who came to McGill should have received, was interesting and thoughtful, but I think it missed the point. Benson criticized a Quid editorial, saying that the editorial had suggested that we should not address political questions to the Soviet lawyers, that we should only ask about the rules contained in Soviet statutes while ignoring the reasons for and applications of those rules. The editorial was, I think, saying something different: that we should be as curious about the way Soviet law governs the everyday activities of the Soviet people as we should be about the more sensational trials of dissidents.

We should, of course, ask the political questions, but not because we expect to get meaningful answers. Any member of a Soviet legal delegation travelling abroad is more than likely someone who has been cleared by the Soviet government or bureaucracy, and should be taken as a representative of the State. We should ask him questions about the legal treatment of dissidents, simply to show him that we are aware and concerned about the dissident's plight. But if we want to learn about Soviet society, there are other questions we should ask. For all the oppressiveness, the Soviet Union has a legal system, one that punishes criminals and settles disputes between citizens. If we want to learn about the Soviet Union, we could

Cont'd on p. 8

Au sujet des déchets nucléaires

Mercredi dernier l'invité du "L.S.R." était Gordon Edwards du regroupement "Canadian Council for Nuclear Responsibility". Le sujet de la conférence: les questions politiques et légales soulevées par le problème des déchets nucléaires.

M. Edwards a rappelé qu'il y avait en principe deux catégories de rebuts nucléaires: ceux qui sont créés par le fonctionnement des réacteurs nucléaires et ceux qui proviennent de l'extraction minière des combustibles tel l'uranium 235. Le premier type de déchet ne se retrouve pas encore en grande quantité mais il possède un niveau de radioactivité très élevé et est donc extrêmement toxique: par exemple, lors de l'incident de Tchernobyl, seulement 3% des radiations qui auraient pu être émises par le combustible du réacteur soviétique se sont échappées dans l'atmosphère. Quelques secondes d'une exposition plus ou moins directe suffisent à provoquer la mort d'un être humain.

Les rebuts provenant de l'exploitation des mines de combustibles, bien que faiblement radioactif, représente cependant un volume considérable qui se

quantifie dans le cas du Canada dans les 150 millions de tonnes. Les effets des radiations qu'ils dégagent ne se font sentir qu'à plus au moins long terme, mais sont tous aussi indésirables.

L'allocution de M. Edwards soulevait plusieurs points inquiétants. Qui a la responsabilité ultime de ces rebuts? Les entreprises engagées dans l'industrie nucléaire (qui parfois sont dissoutes et disparaissent au bien mauvais moment)? Qui doit être responsable des dommages matériels et personnels occasionnés par un incident? Les compagnies d'assurance qui n'ont ni l'intérêt ni les moyens de le faire étant donné les coûts exorbitants qu'un tel incident générerait?

Dans le peu de temps qu'il avait à sa disposition, M. Edwards a également parlé des diverses implications légales du transport et du remisage des déchets et spécialement au Canada. C'est sous cet aspect du problème surtout que surgit l'épineux conflit entre les intérêts des particuliers/communautés et ceux du public en général soit disant représenté par

le gouvernement en place.

Les propos de M. Edwards soulèvent les dangers que posent les déchets nucléaires, l'inefficacité des solutions jusqu'à présent envisagées, et l'inertie des gouvernements dans ce domaine, qui loin de penser à surseoir au moins temporairement à la production des rebuts, s'entêtent à l'exemple de ceux du Canada et de l'Ontario à encourager une industrie nucléaire non rentable simplement à cause des milliards de dollars qu'on y a déjà investis. Le mouvement que représente M. Edwards prône entre autres choses l'arrêt de la production des rebuts jusqu'à ce qu'on ait trouvé une solution à leur élimination ou leur remisage. A mon avis, même en tenant compte de tous les facteurs économiques, c'est là la voie qu'il faut emprunter. Les présents déchets ne se volatiliseront pas par enchantement; en continuant de les accumuler on sera peut-être forcé d'adopter une politique de remisage qu'on pourrait sérieusement regretter. La pollution causée par l'enfouissement il y a quelques dizaines d'années de certains produits chimiques, devrait servir de leçon.

ABBY

Cont'd from p. 5

the hill. You'll possibly feel much better at Christmas break. In the meantime, here's a little poem for you:

Look at the happy moron
Who doesn't give a damn
I wish I were a moron
By God! Maybe I am!

Dear Abby Initio,

I am in lust. I just cannot keep my mind off of this cute young Iranian boy. I've tried to be passive about the whole matter, but he just won't go for it. To top things off, the other night I caught him in bed with another boy. How can I get him to see things my way? I'm getting tired of his coyness.

Bored Man

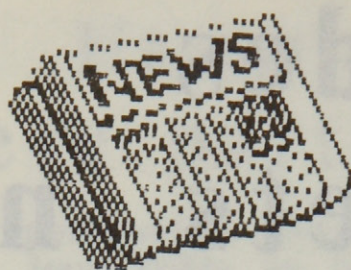
Dear Bored,

Perhaps you should try a more active approach or something similar. Is there any evidence that he would like that more? Has he said anything about the whole idea? Try taking him out to a nightclub and plying him with drinks.

Cont'd from p. 6

start by, for example, studying the complex and numerous disputes over square feet of rental space in Moscow.

Even given the limited talks we did hear, I think we learned something. When a questioner from the audience asked about rights in the Soviet Union, the Russians seemed to be unsure of what he meant, and conferred amongst themselves for a few minutes. They finally asked him what he did mean - was he talking about things like habeus corpus, or about



P O T P O U R R I

- Charges of soliciting against two women were dropped when a judge ruled the expression "one on one" does not necessarily refer to sex.

The women had allegedly offered an undercover policeman a "one on one" for a fee of \$100 each.

Defence lawyer Tony Serka argued the expression could mean anything from a basketball play to a chat between a psychiatrist and a patient.

- A group of Quebecers is seeking compensation from a Montreal wholesaler of travel packages. The hotel they were booked in in Haiti was a hotbed of prostitution to such an extent that even the chambermaids offered "bed services other than just changing the linen." The president of Haiti Tours defended his company saying that it is common knowledge in Quebec of this particular hotel's reputation and travel agents are supposed to inform clients of this fact.

economic rights, or about rights in general? The official party line is, of course, that Americans enjoy political rights but not economic ones, and that free speech doesn't mean much if you're out of work and hungry in the middle of a New York slum. Maybe our Russian guests were being deliberately obtuse to put this point across - they should by now know what a North American audience is talking about when it asks questions about "rights". Or maybe they were sincere, and the concepts and cate-

- Henry Morgentaler's lawyers are arguing before two separate courts this week. In Ottawa, Morris Manning came under fire from the Supreme Court justices for telling the jury they could break the law and not convict Morgentaler. Manning insists he merely said they needn't "apply" the law. Justice Beetz asked if juries needn't obey the law (and thus break their oath), why should judges. Manning replied that that was the beauty of the jury system, i.e. juries could do things judges can't. Needless to say, with one American judge's dissenting opinion backing his arguments, the bench was not impressed.

- In Montreal, lawyer Emile Colas argued that Justice Minister Marx overstepped his authority in ordering a stay of proceedings with respect to charges laid against Dr. Yvan Machabée for performing illegal abortions. The lawyer for the Justice Department, Suzanne Coupal, countered with the argument that Marx was exercising his discretionary power as attorney general, and was answerable only to the legislature.

gories of Soviet Law have shaped their thinking so that they really don't see the issues the same way we do. If we're serious about the mission Prof. Benson sets out for the law school in his letter - "to treasure and promote critical discussion of any idea and of every legal order," including our own - then maybe it's something we should think about.

Joseph Kary